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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION
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DOCKET SECTION

Applications of AMERICAN AIRLINES, INC. and AEROVIAS NACIONALES DE COLOMBIA, S.A. for exemptions under 49 U.S.C. §40109	Dockets OST-97-2081-2 and OST-97-2083-2
Joint Applications of AMERICAN AIRLINES, INC. and AEROVIAS NACIONALES DE COLOMBIA, S.A. for Statements of Authorization under 14 CFR Parts 207 and 212 (Reciprocal Code-Sharing Services)	Undocketed

CONSOLIDATED ANSWER OF UNITED AIR LINES, INC.

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DATED: February 3, 1997

25pgs

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DATED: February 3, 1997

CONSOLIDATED ANSWER OF UNITED AIR LINES, INC.

United Air Lines, Inc. ("United") submits the following consolidated answer to the above-captioned applications of American Airlines, Inc. ("American") and Aerovias Nacionales de Colombia, S.A. ("AVIANCA"):

1. American Is Seeking To Reduce Competitive Opportunities In The U.S.-Caribbean/Latin America Region

American and AVIANCA, the two largest carriers in the U.S.-Colombia market, propose to code share on each others' services. This is merely the latest in a series of applications in which American, the dominant U.S. carrier in the U.S.-

Caribbean/Latin America region, with 62 percent of U.S. carrier enplanements,[1] seeks to solidify and extend its control of this region by code sharing with a major foreign carrier competitor.

American has already entered into similar cooperative arrangements with the following foreign Caribbean/Latin America carriers: ALM Antillean Airlines (Netherland Antilles); AVIATECA (Guatemala); BWIA (Trinidad & Tobago and Barbados); COPA (Panama); LACSA (Costa Rica); LAPSA (Paraguay); NICA (Nicaragua); TACA (El Salvador); and TACA de Honduras. Thus far, the Department has not approved a single one of these code shares and has set for further investigation the code shares involving the TACA Group of carriers. Undaunted, American is proceeding with its efforts to increase its control of air services in this region by adding still more foreign carrier partners. There are, for example, reports that American is also discussing cooperative arrangements with additional foreign carriers in this region such as Aerolineas Argentinas, LAN-Chile, VARIG and TAM (a Brazilian regional carrier). American is also seeking DOT authority for an expansion of its code sharing for Canadian Airlines International on services to and from this region. If all of its Caribbean/Latin America code-share arrangements already agreed or in negotiation were implemented, American would have created a

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[1] Source: AVIATION DAILY, January 16, 1997, at 100.

hemispheric cartel that would control markets all the way from Hudson's Bay to Cape Horn. See Exhibit UA-1.

Appropriately, the Department has not authorized American to use code sharing in its attempted cartelization of the Caribbean/Latin America region. This has been accomplished by refusing to approve, rather than by denying American's proposed code shares. United believes that it is now necessary for the Department to issue a statement setting forth a policy against the formation of such cooperative marketing agreements by American in this area. Unless the Department takes such decisive action, American will continue to enter into pre-emptive arrangements with the major foreign carriers in the Caribbean/Latin America region one-by-one (or group-by-group in the case of regional alliances such as that with the TACA Group).

The Department approves code shares where they create public benefits. These include services to new markets which the code share partners could not support on their own. American's Caribbean/Latin America code shares do not offer such benefits. Rather, they involve for the most part code shares in overlapping markets concentrated at the Miami gateway which American already dominates.[2] American is well aware of the Department's policy and is proceeding to enter into code shares such as that with

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[2] See generally, United's pleadings in Dockets OST-96-1939/40/41/42.

AVIANCA with full knowledge that they are unlikely to be approved. Each time American enters into a new alliance with a foreign carrier such as AVIANCA, however, it creates pressure on other foreign carriers in the region to follow suit. What proposition could be more enticing to these foreign carriers, after all, than an opportunity to cooperate with their largest U.S. competitor? American's continued signing of code-share agreements takes potential partners out of circulation through exclusivity arrangements.[3] By this means, these foreign carriers are precluded from seeking partnerships with other U.S. or foreign carriers that would produce consumer benefits through increased competition, consistent with DOT policy, rather than reduce competition, as American's partnerships would do.

American already controls over 53 percent of the total seats between Miami and the Caribbean/Latin American region (excluding Mexico) and 82 percent of the U.S. carrier services. American's pending code-share partners control an additional 12 percent. If these code shares were to go forward, American and its partners would control 65 percent of the total Miami-Caribbean/Latin America market. The next largest carrier at

[3] In the case of the American/ALM and American/TACA Group code shares, American's contracts would effectively preclude existing code shares with United and Continental, respectively.

Miami is United, with less than 6 percent of the regional market.[4] The Department must take decisive action to stop American's use of code sharing to increase still further its grip on the Miami gateway. This requires denial of the instant American/AVIANCA requests.

2. <u>This Proposal Raises Issues Relating To The Combined Marketshare Of American And AVIANCA That Are Even More Serious Than Those Which Gave Rise To The Department's Concern In The American/TACA Group Case</u>

The American/AVIANCA code share raises even more serious competitive concerns than that proposed between American and the TACA Group. The characteristics of the U.S.-Colombia market are similar to that between the U.S. and Central America. Miami is by far the largest U.S. gateway to Colombia, with 76 percent of the traffic and 72 percent of the nonstop seats.[5] American is the largest carrier at Miami, as noted previously. American also dominates the Miami-Colombia city pairs with 52 percent of the nonstop seats. AVIANCA is the second largest carrier in the U.S.-Colombia market, operating 30 percent of the nonstop seats. Together, these carriers control over 80 percent

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[4] Exhibit UA-2. United code shares with Cayman Airways which operates 1.32 percent of the seats in this Miami regional market.

[5] Source: Exhibit UA-3 and OAG (January 1997).

of the Miami-Colombia service and over 70 percent of the overall U.S.-Colombia services. Exhibit UA-4.

These same concerns led the Department to conduct an investigation of the American/TACA Group code share:

> In regard to the American/TACA Group application, we concluded that the arrangement presents serious competitive issues that need investigation before we can conclude whether approval will be consistent with the public interest. In particular we noted the dominant positions held by American and the foreign carriers involved in the alliance in the Central American market. Those carriers were the largest carriers in the markets at issue, and American was the only U.S. airline with a hub at Miami, the dominant gateway for U.S.-Central America service. We also noted the applicants' plan for a large scale alliance and their intention to move toward an integration of their services which could hinder competition between American and the TACA Group carriers.

Order 97-1-15 at 4. All of these same competitive concerns apply with equal weight to the American/AVIANCA code share. There are in this case, however, the additional issues (discussed below) raised by the anticompetitive terms of the U.S./Colombia bilateral agreement as well as the inability of the applicants to implement many of their code-share services due to FAA's safety assessment of Colombia.

It is, therefore, even more obvious in this case than it was in the case of the American/TACA Group code share that the proposed services cannot be approved consistent with DOT's policies. This is not a case that should be subject to further investigation as was American/TACA Group proposal. Rather, the Department should deny these applications based on the pleadings. Such action will send a useful message to other Caribbean/Latin American carriers that they should not collaborate with American but should seek other U.S. code-share partners that can implement services that will increase competition and receive approval consistent with DOT policy.

3. <u>The Competitive Concerns In This Case Extend Beyond The U.S.-Colombia Market To All Of South America</u>

In addition to their code share for U.S.-Colombia services, American proposes to use AVIANCA's services beyond Colombia to downline points in South America. Thus, American proposes to offer services via Bogota to Buenos Aires, Caracas, Lima, Quito, Santiago, Rio de Janeiro and Sao Paulo. American is already the largest carrier to all of these points, and dominates services to these points from the Miami gateway.

As noted below, there are bilateral considerations which preclude American from implementing these services under the bilateral agreements the U.S. has with Argentina, Brazil, Ecuador, Peru and, possibly, Chile. Even if, however, there were no such limits and the American/AVIANCA code share could be implemented to these downline points under applicable bilateral agreements, the proposed services beyond Bogota produce no net public benefits. American is merely adding onestop connections to markets that it already dominates with nonstop services out of Miami. These beyond-Bogota third-country code shares are merely another effort of American to solidify its control of the various U.S.-South America markets that would be served.

4. The U.S./Colombia Bilateral Agreement Precludes U.S. Carrier Competition; Approval Of A Code Share Involving American And AVIANCA Would Be Inconsistent With DOT Policy

Concerns are raised not only by the American and AVIANCA market shares, but also by the fact that the U.S.-Colombia market is governed by an extremely anticompetitive bilateral agreement. Carrier entry is entirely frozen for two years and there can be no increase in U.S. carrier capacity over that period.[6] United has previously sought authority to compete with American between the Miami gateway and Bogota but was turned down due to entry limits imposed by the government of Colombia. U.S.-Colombia Combination Service Case, Orders 93-9-12 and 93-7-38. There is no opportunity available for a competitor to respond to the American/AVIANCA cooperative services under the restrictive U.S./Colombia bilateral.

[6] American is permitted to increase capacity by three flights per week between New York and Bogota. In order to operate a weekly pattern, however, American must move four weekly frequencies from the Miami-Bogota route. U.S./Colombia Memorandum of Consultations, Attachment B (August 22, 1996). As of this date, American has not exercised these rights nor has it explained how it might do so pursuant to an agreement with AVIANCA.

The U.S./Colombia agreement is also silent with respect to code sharing. As American and AVIANCA concede, their request for approval of their code shares is entirely extrabilateral. There is no assurance that another U.S. carrier, such as United, could offer code-share service between the U.S. and Colombia in conjunction with another Colombian or a third-country carrier. The government of Colombia has consistently resisted additional U.S. carrier designations and cannot be relied upon to permit such code sharing by a carrier such as United that is not currently designated. Even if permitted, the only other Colombian carrier serving the U.S. -- ACES -- operates only 17 weekly frequencies between Miami and Colombia (8 to Bogota and 9 to Medellin). That is hardly competitive with the combined American/AVIANCA service pattern which would involve a total of 66 weekly Miami-Colombia frequencies. Third-country carrier code-share services, even if they were permitted, would involve one-stop connections and circuitous routings that would not be competitive with American/AVIANCA services from the major East Coast U.S. gateways of Miami and New York.[7]

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[7] Aerolineas Argentinas is the only third-country carrier serving the U.S.-Colombia market on a nonstop basis but its U.S. gateway for these services is Los Angeles. In any event, Aerolineas Argentinas has been reported to be negotiating with American over both a cooperative marketing agreement and acquisition of an ownership interest and would be unlikely to be interested in a code share with another U.S. carrier while those negotiations are pending.

Notwithstanding the bilateral limitations on other carriers' abilities to serve the U.S.-Colombia market, both American and AVIANCA seek market access that far exceeds the rights available to them under their respective bilateral routes. American requests authority to serve the Colombian gateway of Medellin as well as twelve (12) beyond gateway points in Colombia. None of these points can be served consistently with the agreed U.S. carrier route. AVIANCA requests authority to serve the Dallas/Ft. Worth gateway as well as 28 beyond gateway U.S. points that are not authorized on the Colombian carrier bilateral route. Moreover, as noted previously, American seeks authority to code share on AVIANCA's services to third-country points beyond Colombia. This raises additional bilateral issues in circumstances where American would be offering services in excess of those available under the applicable U.S. agreements with Argentina, Brazil, Peru, Ecuador and, possibly, Chile.

In similar circumstances in the past, the Department has deferred action on an extrabilateral request such as that of American and AVIANCA pending negotiations with the relevant foreign government aimed at allowing other U.S. carriers to compete. Only when the foreign government has agreed to allow other carriers to compete has the U.S., consistent with the agreement reached on this issue, approved a code share such as that proposed by American and AVIANCA.

In these prior actions, the Department recognized the need to assure competition between carrier alliances. Approval of the American/AVIANCA code share in the absence of similar assurances would create an additional unfair advantage for the American/AVIANCA alliance by giving American and its partner broadened access to the U.S.-Colombia and U.S.-South America markets through code sharing that could not be matched by other U.S. carriers. American has itself opposed approval of code shares where such an unfair advantage would result:

> The public interest compels close scrutiny -- and disapproval -- of reciprocal distribution pacts in international aviation markets where the arrangements act as a device for excluding unaffiliated U.S. carriers and rewarding foreign-flag carriers for monopolistic practices at home.[8]

Indeed, American was in the forefront of those U.S. carriers which opposed approval of code sharing under the United/Lufthansa alliance until the U.S. and Germany entered into a broadened transitional agreement allowing other U.S. carriers to code share on services to and beyond Germany:

> Consistent with this Administration's commendable emphasis on preserving export opportunities for U.S. companies, code-sharing opportunities should never be made available to the flag carrier of any nation whose government does not allow fully equivalent opportunities to all U.S. carriers

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[8] Comments of American Airlines, Inc., Docket 49223, April 1, 1994, at p. 16.

> to serve to and beyond the foreign carrier's homeland.[9]

In response to that pressure, the U.S. refused to approve portions of the United/Lufthansa code-share services (including third-country services) until additional U.S. carrier rights had been agreed by Germany. See Orders 94-4-43 and 94-1-19. Secretary Peña explained the Department's position as follows:

> Our policy in the area of international code-sharing requests is comparable economic opportunities.
>
> That means that before a foreign carrier is allowed to undertake code-share arrangements in the U.S., we will require that its homeland guarantee U.S. airlines comparable market access. Those countries that continue to pursue restrictive aviation policies should understand that the benefits of code-share alliances will not be extended to their airlines until those policies have changed.[10]

The Department codified this code-share policy in its International Aviation Policy Statement (April 1995). After recognizing the consumer benefits that are offered through code sharing (pp. 4-5), the Department adopted as a goal for international air transportation a regime in which "carriers should be able to pursue both direct service using their own equipment and indirect service through commercial relationships

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[9] Id. at p. 12.

[10] Testimony of Federico Peña before the House Aviation Subcommittee on May 5, 1994. (Emphasis supplied.)

with other carriers." (p.7) The Policy Statement's Plan of Action (pp. 8-11) recognizes the need to negotiate liberal agreements with foreign governments containing provisions for services such as code sharing. Where other countries "are not willing to advance liberalization of the market, we will maintain maximum leverage to achieve our procompetitive goals. We can limit their airlines' access to the U.S. market and <u>restrict commercial relations with U.S. airlines.</u>" (Emphasis supplied.)

It is hard to imagine a bilateral regime that is more anticompetitive and restrictive than that between the U.S. and Colombia. American and AVIANCA are the two carriers that have benefited most from the protections against competition afforded by that regime. There should be no opportunity for these two carriers to cooperate anywhere unless and until the U.S.-Colombia market is opened up to additional competition. Moreover, given American's dominance of the Miami markets, the Department should not entertain any cooperation between American and AVIANCA for Miami-Colombia or Miami-South America services even if an open skies agreement were concluded.

5. <u>The FAA's Category 2 Safety Assessment Of Colombia Precludes Implementation Of Many Of The Proposed Services</u>

There are also several other issues raised by the proposed American/AVIANCA services that are not adequately addressed in their applications. One of these relates to the extent to which the proposed services can be implemented given Colombia's status under the FAA's International Aviation Assessment Program. The applicants note that Colombia is presently in Category 2. This means that AVIANCA may not increase its services to or from the U.S. until the FAA has cleared Colombia into Category 1.

The carriers propose services in U.S.-Colombia city pairs that neither of them presently serve, most notably Dallas/Ft. Worth-Bogota. Each carrier proposes to code share on the other's non-existent service in that city pair. Under the 1996 MOC, American cannot add services in the DFW-BOG city pair without reducing service in other city pairs. AVIANCA cannot add service in that market due to FAA restrictions. There is, thus, no apparent ability to implement the code share in the DFW-BOG city pair.

Moreover, American proposes to code share on numerous AVIANCA flights beyond Colombian gateways that would originate or terminate in Colombia but not serve the U.S. United has been advised by Department staff that a U.S. carrier cannot display its code on operations of a foreign carrier from an FAA Category 2 country unless those services involve flight operations that serve a U.S. point. Under that analysis, none of the beyond gateway American code shares to Colombian or third-country points could be implemented so long as Colombia remains in Category 2.

In addition, several of the beyond gateway points are served only by the AVIANCA affiliate Sociedad Aeronautica de Medellin ("SAM").[11] None of these code shares could be implemented so long as Colombia remains in FAA Category 2 for the reasons discussed above. Although the joint application for a statement of authorization requests authority for SAM as well as AVIANCA to code share for American, the contract between American and AVIANCA does not include code sharing by affiliates such as SAM. Finally, the Department would not allow SAM to code share for American between points outside the U.S. unless SAM had the requisite DOT operating authority in the form of an exemption. According to DOT records, SAM's DOT operating authority is limited to an exemption to operate cargo charter services.

Absent some explanation of how the code share would be implemented under the restrictions imposed by the bilateral agreement taken together with Colombia's FAA safety assessment status, many of the services proposed could not actually be operated even if they were consistent with the Department's policy, which as noted previously, they are not.

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[11] These include services in the following city pairs where American proposes to display its designator code: BOG-LET, BOG-MTR, BOG-PVA, BOG-RCH and BOG-VUP.

6. Conclusion

This is not a code-share proposal that calls for further investigation such as that between American and the TACA Group. The Department knows enough about this code share to deny the applications of American and AVIANCA now, based on the applicants' relative dominance of the code-share markets, the anticompetitive provisions of the U.S./Colombia bilateral agreement and the restrictions imposed by the FAA's safety assessment of Colombia on implementation of the proposed services. In these circumstances, United urges the Department to deny the applications of American and AVIANCA. Such action should have the ameliorative effect of informing other Caribbean/Latin American carriers that they cannot expect approval of similar code-share arrangements involving American and should look for U.S. partners whose services will produce a net gain in competitive benefits, rather than foreclosing competition as would such services offered in conjunction with American.

Respectfully submitted,

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DATED: February 3, 1997

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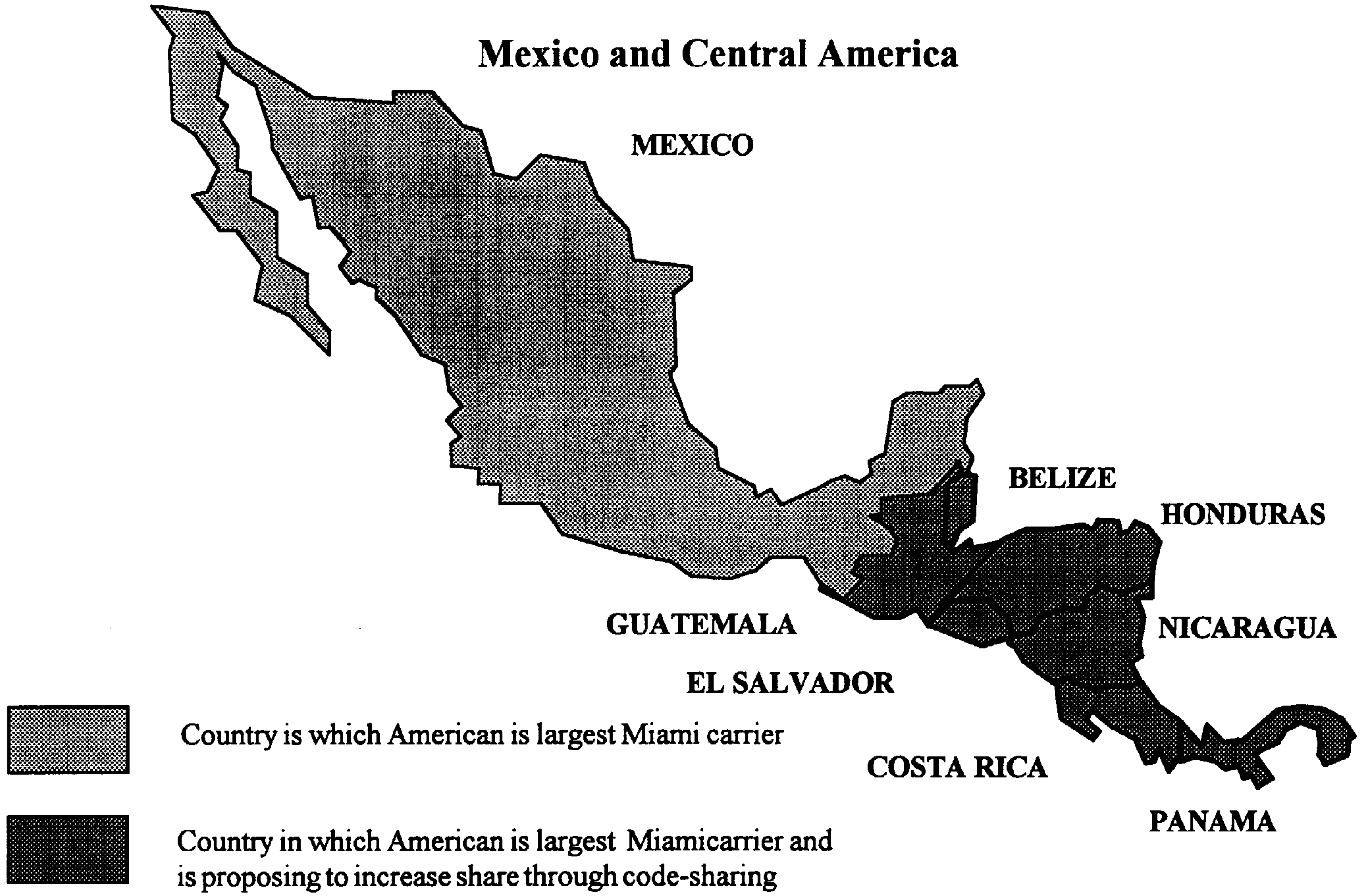
THE COMPETITIVE STATUS OF AMERICAN AIRLINES IN THE MIAMI-LATIN AMERICA MARKET
South America

★ No single-plane service to Miami

Country is which American is Miami's largest carrier

Country in which American is Miami's largest carrier and is proposing to increase share through code-sharing

THE COMPETITIVE STATUS OF AMERICAN AIRLINES IN THE MIAMI-LATIN AMERICA MARKET



THE COMPETITIVE STATUS OF AMERICAN AIRLINES IN THE MIAMI-LATIN AMERICA MARKET

Country	Miami Nonstop Seats	Carrier Seat Share American	Carrier Seat Share AA Code-share Partner*	Combined Seat Share
1. Brazil	19,420	30%	18%	48%
2. Puerto Rico	18,228	**80%**		**80%**
3. Mexico	18,190	**55%**		**55%**
4. Bahamas	16,210	49%		49%
5. Venezuela	14,197	36%		36%
6. Jamaica	13,426	**51%**		**51%**
7. Colombia	12,733	**52%**	**30%**	**82%**
8. Dominican Republic	10,443	**68%**	8%	**76%**
9. Argentina	9,301	39%	32%	**71%**
10. British West Indies	7,461	**51%**		**51%**
11. Costa Rica	7,364	**57%**	12%	**69%**
12. Chile	7,204	41%	39%	**80%**
13. Ecuador	7,054	**53%**		**53%**
14. Peru	7,011	38%		38%
15. Netherlands Antilles	6,885	**63%**	37%	**100%**
16. Panama	5,383	**76%**	18%	**94%**
17. Haiti	4,747	**78%**	13%	**91%**
18. El Salvador	3,752	**56%**	44%	**100%**
19. Virgin Islands	3,632	**80%**		**80%**
20. Honduras	3,629	**65%**	30%	**95%**
21. Guatemala	3,521	**60%**	22%	**82%**
22. Bolivia	3,244	41%		41%
23. Barbados	3,115	**60%**	40%	**100%**
24. Nicaragua	2,962	35%	26%	**61%**
25. Trinidad & Tobago	2,702	**69%**	31%	**100%**
26. Turks & Caicos	2,100	**100%**		**100%**
27. Belize	1,947	**54%**	46%	**100%**
28. Guyana	197			0
29. Guadeloupe	120			0
30. Martinique	120			0

*Does not include beyond Bogota code-share with Avianca

Source: *OAG*, January 1997
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SEAT SHARE OF AMERICAN AND ALLIANCE CARRIERS IN THE MIAMI-CARRIBBEAN/CENTRAL AND SOUTH AMERICA MARKETS

January 1997

Carrier	Weekly Seats	Seat Share AA	Seat Share Alliances	Carrier	Weekly Seats	Seat Share AA	Seat Share Alliances
AA-American	105,078	53.1	53.1	CF-Faucett	1,740	.9	0
UA-United	11,487	5.8	0	EH-SAETA	1,716	.9	0
JM-Air Jamaica	6,552	3.3	0	LR-LACSA	1,650	.8	.8
UP-Bahamasair	4,762	2.4	0	EU-Ecuatoriana	1,578	.8	0
AR-Aerolineas Argentinas	3,812	1.9	1.9	7P-APA	1,463	.7	0
VC-Servivensa	3,724	1.9	0	FF-Tower	1,410	.7	0
AV-Avianca	3,688	1.9	1.9	PL-Aeroperu	1,323	.7	0
TA-TACA	3,626	1.8	0	FQ-Air Aruba	1,253	.6	0
RG-Varig	3,565	1.8	1.8	ML-Aero Costa Rica	1,197	.6	0
LA-Lan-Chile	3,236	1.6	1.6	LU-Air Atlantic Dominican	1,008	.5	0
BW-BWIA	2,813	1.4	1.4	CM-COPA	990	.5	.5
VP-VASP	2,637	1.3	0	VE-Avensa	896	.5	0
VX-Aces	2,635	1.3	0	TR-Transbrasil	812	.4	0
KX-Cayman	2,604	1.3	0	6Y-NICA	770	.4	.4
LB-Boliviano	2,410	1.2	0	GU-AVIATECA	770	.4	.4
VA-Venezolana	2,170	1.1	0	NW-Northwest	721	.4	0
IB-Iberia	2,139	1.1	0	OI-Paradise Airways	720	.4	0
LM-ALM	2,028	1.0	1.0	OD-Zuliana	651	.3	0
OP-Chalks	1,862	.9	0	LT-LTU	408	.2	0
3M-Gulfstream	1,808	.9	0	WD-Halisa Air	399	.2	0
BK-Paradise Island	1,782	.9	0	AF-Air France	240	.1	0
KW-Carnival	1,778	.9	0	GY-Guyana	197	.1	0
				Total	198,108		64.8%

Source: *OAG* January1997

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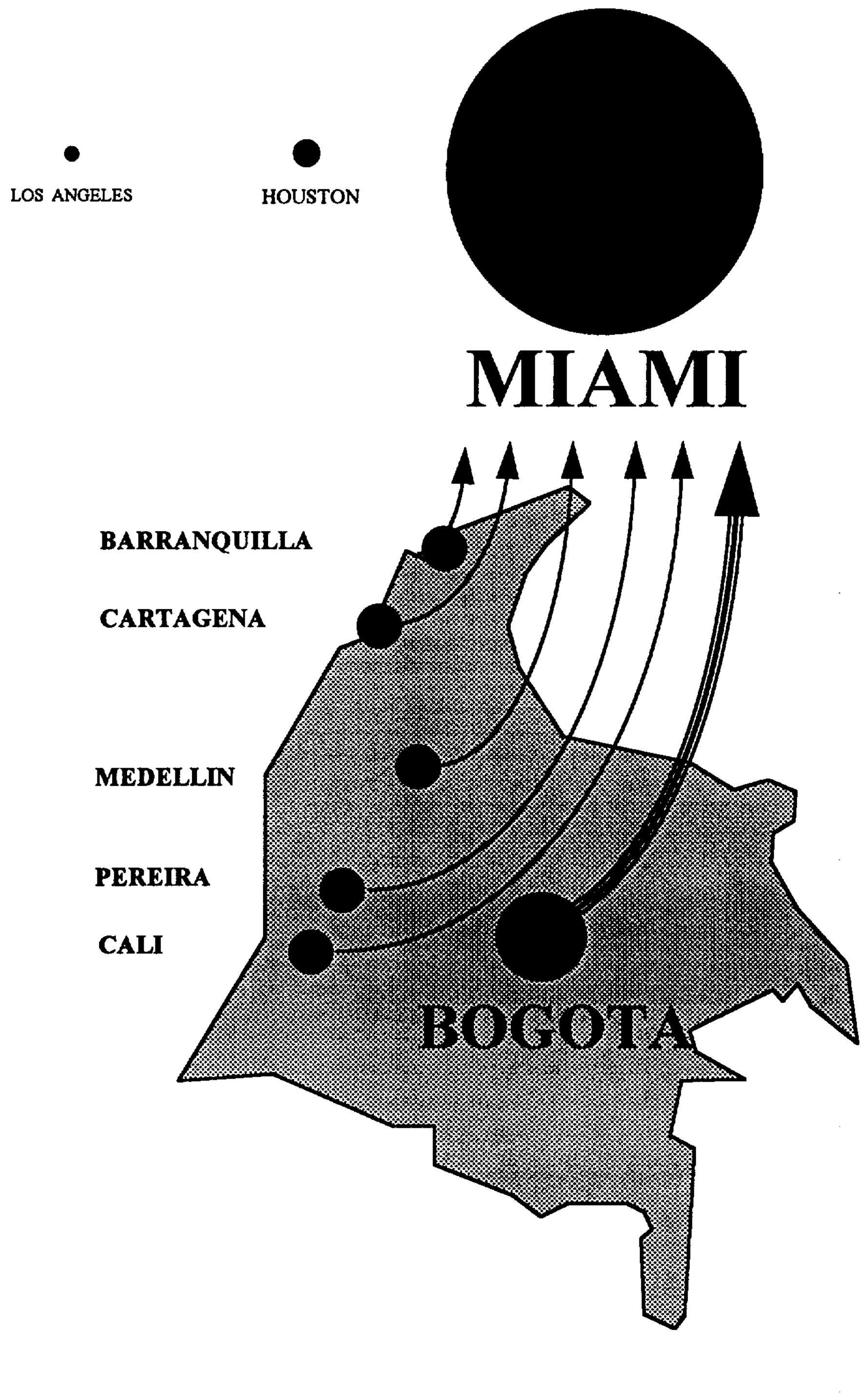
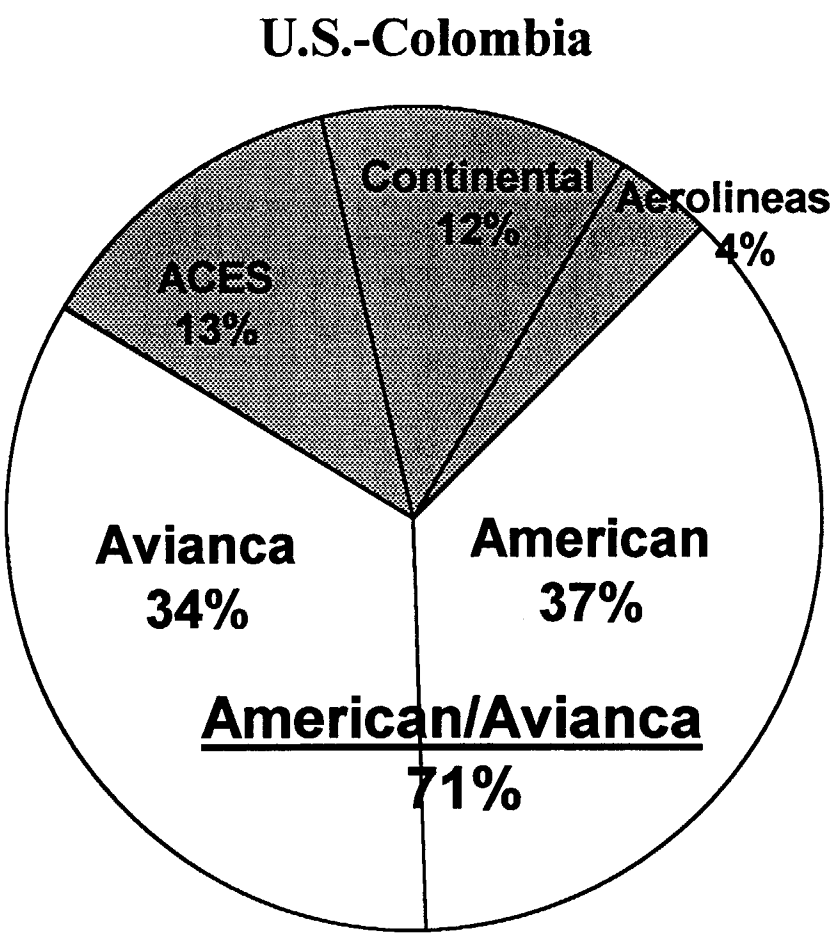
Exhibit UA-3

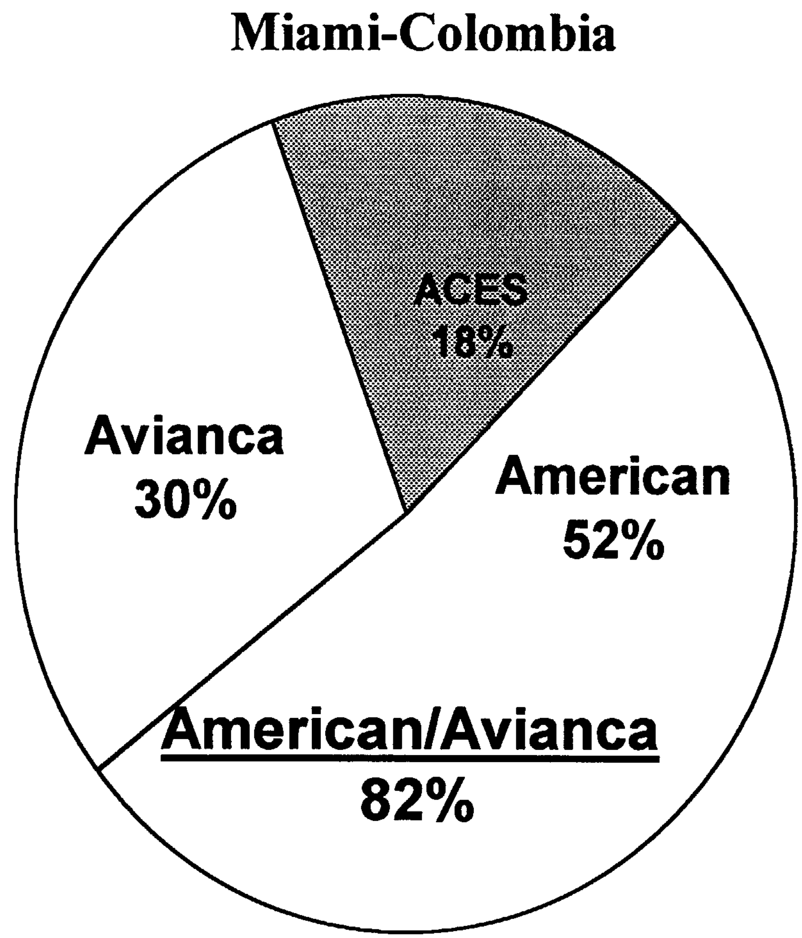
MIAMI IS BY FAR THE DOMINANT U.S. GATEWAY FOR U.S.-COLOMBIA PASSENGERS



U.S. gateways are scaled according to 1995 U.S.-Colombia INS traffic. Gateway share of traffic: Miami 76%, New York 15%, Houston 6% and Los Angeles 1%.

AN AMERICAN/AVIANCA ALLIANCE WOULD CONTROL THE U.S.-COLOMBIA AND MIAMI-COLOMBIA MARKETS





Source: Nonstop seat share from *January 1997 OAG*

Exhibit UA-4

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Consolidated Answer of United Air Lines, Inc. on all persons named on the attached service list by causing a copy to be sent via first class mail, postage prepaid.

Brenda Gardner

Brenda Gardner

DATED: February 3, 1997

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